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February 14, 2022

VIA ECF FILING

The Honorable Hildy Bowbeer
United States Magistrate Judge
District of Minnesota
632 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Re: *In re Pork Antitrust Litigation;* Case No. 0:18-cv-01776-JRT-HB
Joint Submission of Class Plaintiffs Response to ECF No. 1182

Dear Judge Bowbeer:

We write on behalf of Direct Purchaser Plaintiffs, Consumer Indirect Purchaser Plaintiffs, and Commercial and Institutional Indirect Purchaser Plaintiffs (collectively, "Class Plaintiffs") in response to Defendants' and Direct Action Plaintiffs' ("DAPs") joint submission to the Court.[1] *See* Letter from J. Taylor (ECF No. 1182) & Ex. A (ECF No. 1182-1) (Feb. 11, 2022). That letter and exhibit focus on DAP-specific scheduling and case management issues.

Class Plaintiffs were not included in the meet and confer between Defendants and the DAPs. As Class Plaintiffs learned only from Defendants' and DAPs' joint submission, Defendants' proposal contains a provision to modify the Pretrial Scheduling Order (ECF No. 658) that risks prejudicing Class Plaintiffs. DAPs seek to count depositions of their own former employees toward the per-DAP deposition limit regardless of whether the DAP represents the witness in the deposition. If the Court grants such relief, then Defendants seek a corresponding change in how depositions of Defendants' former employees are counted:

> To the extent the Court adopts MDL DAPs' position, Defendants request that the change to the Pretrial Scheduling Order be made reciprocal; that is, depositions of former employees of Defendants deposed for the purpose of

[1] Class Plaintiffs received permission from the Court to submit a letter.

> obtaining information about their employment by that Defendant should count toward the per-Defendant family limit.

See ECF No. 1182-1 at 5.[2] This would be a change from the current Pretrial Scheduling Order, which provides that Plaintiffs may depose ten "current employees, as well as former employees *where the Defendant makes the witness available for deposition*" from each Defendant corporate family. *See* Pretrial Scheduling Order § 5(a)(i) (emphasis added). Former employees "whom the Defendant does not make available for deposition" do not count toward this limit. *See id.*

Class Plaintiffs oppose Defendants' request. Defendants have not shown good cause to impose further limitations on the number of depositions of each Defendant family. Defendants' proposal would potentially force all Plaintiffs to take fewer depositions of Defendants, and their *only* claimed justification is reciprocity with the change DAPs are seeking for themselves.

Class Plaintiffs respectfully submit that the Court should not modify the per-Defendant family percipient witness limits in Section 5(a)(i) of the Pretrial Scheduling Order.

[2] Defendants' and DAPs' joint submission highlights an ongoing case-management issue that is intertwined with their exclusion of the Class Plaintiffs from the meet-and-confer process. DAPs' continued reference to "MDL DAPs" appears calculated to avoid the actual procedural history of this litigation. The Court has consolidated all of the cases, as it has consistently ordered from the start of the litigation, and there is no separate DAP MDL. *See* Initial Case Mgmt. Order (ECF No. 85) (Sept. 21, 2018); Mem. Op. & Order (ECF No. 985) (Nov. 14, 2021). The so-called "MDL DAPs" seek to distance themselves from the negotiations they do not like, even though those negotiations included DAPs Winn-Dixie and Puerto Rico. Indeed, Winn-Dixie's counsel now represents so-called "MDL DAPs" in addition to "pre-existing DAPs." Curiously, MDL DAPs have no problem binding future-filing DAPs with their current negotiations. Class Plaintiffs take no position on DAPs' request to reduce the number of DAP depositions, but simply note that their attempt to artificially divide the case into MDL DAPs and non-MDL DAPs (or non-MDL parties) is contrary to the Court's orders and invites complications and inefficiencies.

Respectfully submitted,

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